

ORDINANCE 420

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, AMENDING CHAPTER 2.24 TITLED ELECTIONS

WHEREAS, the City Council of the City of Solana Beach has the authority to regulate aspects of campaign finance and control related to city elections; and

WHEREAS, pursuant to SBMC 2.24.020 this is a policy of the City to exercise by campaign contributors of potential undue or improper influence over elected official and to inform the public of the sources and objects of campaign contributions and expenditures; and

WHEREAS, certain provisions within the Chapter require updates to comply with state laws as well as clarify and refine regulations.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOLANA BEACH
DOES HEREBY ODAIN AS FOLLOWS:**

Section1: Title 2 of the Solana Beach Municipal Code is amended to read as follows:

Chapter 2.24 ELECTIONS

Sections:

Article I. Municipal Elections

- 2.24.010 Date of elections.
- 2.24.015 Mail ballot elections.
- Article II. Campaign Contributions and Expenditures
- 2.24.020 Intent and purpose.
- 2.24.030 Definitions.
- 2.24.040 Contributions
- 2.24.048 Contributions – Contributions by city contractors.
- 2.24.050 Expenditures
- 2.24.060 Record Keeping
- 2.24.070 Election campaign accounts.
- 2.24.080 Campaign statements.
- 2.24.090 Retention of Records
- 2.24.100 Media exemptions.
- 2.24.120 Late filing of campaign statement.
- 2.24.130 Enforcement.
- 2.24.140 Enforcement – Criminal or civil liability.
- 2.24.145 Enforcement – Administrative.

2.24.150 Use of funds deposited with city.

Article I. Municipal Elections¹

2.24.010 Date of elections.

Pursuant to Section 36503.5 of the State Government Code, the general election for the city shall be held on the same day as the day of the statewide general election. (Ord. 31 § 2, 1987; 1987 Code § 2.24.010)

2.24.015 Mail ballot elections.

A. The city is authorized to conduct elections wholly by mail ballot as set forth in this section. The city council shall determine whether an election will be conducted by mail at the time the election is called. Actions of the city council pursuant to this section shall be set forth in a resolution approved at a regular or special meeting of the city council.

B. The following items may be the subject of an all-mail ballot election:

1. Any election required or authorized by Article XIII C of the California Constitution.

2. Any election to approve a property-related fee or charge as required or authorized by Article XIII D of the California Constitution.

3. Any assessment ballot proceeding required or authorized by Article XIII D of the California Constitution; provided, however, that such a proceeding shall be denominated an "assessment ballot proceeding" rather than an election, and ballots shall be denominated "assessment ballots."

C. Elections authorized by this section shall be held on an established mail ballot election date pursuant to Elections Code Section 1500.

D. Elections authorized by this section shall be conducted in accordance with special provisions as may be adopted by resolution of the city council and with the applicable provisions for mail ballot elections set forth in California Elections Code Sections 4100 et seq, as they now exist or may hereafter be amended. (Ord. 394, 2009)

Article II. Campaign Contributions and Expenditures

2.24.020 Intent and purpose.

A. This article places realistic and enforceable limits on the amount individuals may contribute to political campaigns in municipal elections in order to prevent corruption or the appearance of corruption including undue influence over elected officials by campaign contributors and also to inform the public of the sources and objects of campaign contributions and expenditures.

B. The city council finds that municipal elections are municipal affairs and that the regulation of campaign expenditures and contributions in municipal elections is the proper subject of municipal regulation.

C. The requirements of this chapter shall be administered and interpreted consistent with the requirements of the Political Reform Act of 1974, as amended (State Government Code, Section 81000 et seq), and its implementing regulations, except where

the provisions of this Article impose additional requirements on any person subject to this Article.

D. It is the intent of the city council that this article be interpreted in a manner consistent with constitutional requirements. Should any provision hereof be determined to be invalid for any reason, the remainder shall be severed therefrom and shall remain in full force and effect. (Ord. 61 § 1, 1988; 1987 Code § 2.26.010)

2.24.030 Definitions.

- A. Unless otherwise defined in this section, the words and phrases used in this article shall have the same meaning as defined in the Political Reform Act of 1974, Title 9 of the Government Code of the state, as the Act now exists or may hereafter be amended, including definitions set forth in regulations adopted by the Fair Political Practices Commission.
- B. Whenever the following words or phrases are used in this article, they shall have the meaning set forth in this subsection:
 - 1. "Election" means any city general, run-off, special, initiative, referendum or recall election.
 - 2. "Candidate" means an individual who meets the definition set forth in Government Code Section 82007 and who is a candidate for elective office in the City of Solana Beach.
 - 3. "Individual" means a sole human being.
 - 4. "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert, who meets the definition set forth in Government Code Section 82047.
 - 5. "City" means City of Solana Beach
 - 6. "City Committee" means:
 - a) committees controlled by candidates seeking election to local office;
 - b) committees formed or existing primarily to support or oppose a candidate for local office;
 - c) committees formed or existing primarily to support or oppose the qualification of, or passage of, a local ballot measure which is being voted on only in this jurisdiction;
 - d) city and county general purpose committees active only in this city.

2.24.040 Contributions

A. Limits

1. No Candidate or Controlled Committee shall solicit or knowingly accept any contribution from a person which will cause the total contribution from that person to the candidate or controlled committee to exceed \$100.00 in a single election, in accordance with the exceptions throughout this section. The City shall adjust this amount at the beginning of each calendar year based on the increase, if any, in the San Diego Consumer Price Index. This adjustment shall be rounded up to the nearest ten dollar (\$10) on a cumulative basis.

2. Spouses are two separate individuals for purposes of the contribution limits.

3. A contribution made by an individual less than 18 years of age is presumed to be a contribution from the parent or guardian of the individual.

4. This section shall not prohibit a committee from conveying to a candidate any monies legally received by said committee as contributions.

B. Exceptions

1. The \$100 limitation of Section 2.24.040 A.1. shall not apply to:

- i. A candidate in aid of themselves;
- ii. Any committees which only support or oppose ballot measures;
- iii. Committees not within the jurisdiction.

C. Aggregate Contributions

Candidates or controlled committees for a candidate seeking elective city office may receive no more than \$5,000 in total combined monetary contributions from all persons, other than individuals, contributing to the candidate's election campaign. The City shall adjust this amount at the beginning of each calendar year based on the increase, if any, in the San Diego Consumer Price Index. This adjustment shall be rounded up to the nearest ten dollar (\$10) on a cumulative basis. For purposes of this section "election campaign" begins at the time a statement of intention to be a candidate or a statement of organization for a controlled committee is filed, and ends with the withdrawal, defeat, appointment, or election of the candidate for the office sought.

D. Contributions in Excess of the Limit.

1. If a committee treasurer is offered a contribution which would be in excess of the limitations set forth in this section, the treasurer must refuse the contribution.
2. If, however, a contribution which is in violation of this section is deposited into the campaign bank account, the treasurer shall report in writing to the city clerk within five days of the receipt of the contribution the facts surrounding such payment or contribution. Any such payment or contribution so deposited must be returned.
3. If it is not possible to return to the contributor, then it must be paid within 30 calendar days of receipt to the city's general fund if the amount is less than \$100 and to the State if the amount is \$100 or more (Government Code Section 84304).

E. Anonymous Contributions.

No candidate or city committee shall accept an anonymous contribution of \$25 or more. An anonymous contribution of \$25 or more shall not be kept by the intended recipient, but the entire amount shall be paid within 10 days as follows:

1. An anonymous contribution of \$25 to \$99.99 must be paid to the City Clerk to deposit in the City's general fund.
2. An anonymous contribution of \$100 or more must be paid to the Secretary of State for deposit in the state general fund.

F. Post-election Contributions.

After the withdrawal, defeat or election of a candidate for elective city office, no contributions shall be accepted by the candidate or controlled committee unless there are outstanding debts or loans, and shall be used only to pay the outstanding debts and

loans. All contributions owed by the candidate or controlled committee to themselves shall not otherwise exceed all applicable contribution limits for that election.

2.24.048 Contributions – Contributions by city contractors.

No person(s) who contracts with the city of Solana Beach, either for the rendition of personal services or for the furnishing of any material, supplies, or equipment to the city, or for the sale or lease of any land or building to or from the city, shall make any contribution to a city candidate or controlled committee at any time between the commencement of negotiations for and (1) the completion of performance of such contract or (2) the termination of negotiations for such contract, whichever occurs later.

2.24.050 Expenditures

A. Identification of expenditure source. City committees not controlled by candidates that make expenditures in support of or in opposition to a candidate or measure shall indicate clearly on any material published, displayed or broadcast, the name of the committee and the fact that the material was paid for by a committee not controlled by any candidate.

B. Notification of independent expenditures. In addition to the reporting required by the Political Reform Act of 1974, as amended, and its implementing regulations, for independent expenditures, a city committee, entity (corporation, firm, business, or proprietorship), or individual that makes independent expenditures of \$1,000 or more in a calendar year to support or oppose a candidate for city elective office or city ballot measure, shall notify the city clerk of such expenditure(s). Notification shall be by either electronic mail, facsimile, telegram, guaranteed overnight mail through the United States Postal Service, private delivery service or personal delivery within one business day.

1. Such notification shall be made each time this threshold of \$1,000 is met.
2. The notice shall identify the city committee, entity, or individual making the independent expenditure(s), the name of the candidate, or measure, and whether the communication supports or opposes the candidate or measure, the amount of the expenditure, and a description of the goods or services purchased.
3. The one business day notification period shall begin to run at the time the payment is made, or upon execution of a contract for the goods or services is completed, whichever occurs first.

2.24.060 Record Keeping

- A. All candidates and city committees must practice the record keeping procedures in the manner specified by the Political Reform Act of 1974, as amended. A portion of these requirements along with additional city requirements are outlined below.
- B. Records of receipts. All candidates and city committees must have two types of records for receipts: a daily record, showing how much money was received on any given day; and a contributor record, with detailed information about each contributor of \$25 or more. The daily record requirement may be met with bank

statements, copies of checks received, or other documentation that provides the required information.

1. Contributions less than \$25.00. Any candidate or city committee receiving a contribution of less than \$25.00 is not required to record the name of the donor, but is required to report the lump sum of all such contributions.
 2. Contributions of \$25.00 or more. Any candidate or city committee receiving cumulative contributions of \$25.00 or more is required to record:
 - i. Full name and address, including zip code, of the contributor;
 - ii. Contribution amount;
 - iii. The date received;
 - iv. The type of contribution and the total amount received from the contributor over the course of the current calendar year (the "cumulative amount");
 - v. The contributor's occupation, employer's name or, if self-employed, the name of the business of the person making the contribution or loan (state code thresholds for gathering employer information may be different from the city thresholds).
- C. Missing contributor information. All the contributor information required above must be obtained within 60 calendar days from the receipt of the contribution. If any of the contributor information required above is missing then the contribution in excess of \$25.00 must be returned. If it is not possible to return to contributor, then it must be paid within 75 days of receipt to the city's general fund.
1. Record of expenditures - Expenditures less than \$25.00. A daily lump sum total of all expenditures under \$25.00 must be kept.
 2. Expenditures of \$25.00 or more. For expenditures of \$25.00 or more to a single payee, or a series of expenditures for a single product or service that total \$25.00 or more, the following must be recorded:
 - i. Full name and address, including zip code, of payee;
 - ii. Expenditure amount;
 - iii. Date the expenditure was made or, for accrued expenses, the date the goods or services were received;
 - iv. Description of the goods or services received.

2.24.070 Election campaign accounts.

A. Deposit of Contributions. All campaign contributions accepted by a campaign treasurer or committee shall be deposited within five days of receipt into the election campaign account by the campaign treasurer, committee or authorized agent thereof.

B. Disbursement of Unexpended Campaign Funds. If the final campaign statement for a candidate or any committee discloses an unexpended surplus, the candidate or committee may, after the election, disburse the whole of said surplus. If said fund is disbursed, it shall be disbursed to the city for deferment of election costs, or to charitable organizations of the committee's or candidate's choice that benefit the city, or to both the city and an organization(s) that benefits the city. The candidate or committee, or authorized agent thereof, shall file a statement within 30 days of such disbursement with the city clerk, verifying said closure and listing the donees of all disbursements authorized by this section and the dollar amounts given to each donee.

2.24.080 Campaign statements.

A. Each candidate and committee shall file campaign statements when and in the manner specified in the Political Reform Act of 1974, as amended.

B. Additional city requirements.

1. Any candidate and city committee that receives contributions totaling \$200 or more or makes expenditures totaling \$200.00 or more shall file a statement of organization with the city clerk no later than 10 days following the receipt or expenditure.
2. In addition to the information required by the Political Reform Act of 1974, as amended, each candidate and city committee filing a campaign statement shall, for each contribution or expenditure of \$25.00 or more, disclose the information required by Section 2.24.060 of this article.
3. Pre-election filing: Candidates and city-committees shall file an additional pre-election campaign statement with the city clerk no later than 3:00 p.m. on the Thursday immediately preceding the election. This statement shall have a closing date of the Wednesday preceding the Thursday filing date.
 - i. The statements must be completed on campaign statement forms required to be filed by state law and in addition include:
 - (a) A statement of estimated additional expenditures which the candidate or committee chairperson reasonably expects to expend on or before the election date. An estimate which is unintentionally at variance with the amounts actually expended shall not constitute a violation of this article.

2.24.090-Retention of Records

The candidate, committee, or authorized agent thereof, shall retain all campaign records for a period of five years after the election.

2.24.100 Media exemptions.

A. Any cost incurred in covering or carrying a news story, commentary, or editorial is not a contribution or expenditure regulated by the provisions of this article if the news story, commentary, or editorial is carried by a bona fide: broadcasting station (including a cable television operator, programmer or producer); website; newspaper, magazine, or other periodical publication; or any Internet or electronic publication; unless:

1. The media facility is owned or controlled by any political party, city committee, or candidate for elective office of the City of Solana Beach.

2.24.120 Late filing of campaign statement.

Any person who fails to file a campaign statement by the deadline imposed by this article shall, in addition to any other penalties or remedies established pursuant to this article, be liable to the city clerk in amounts as set forth by the Political Reform Act of 1974, as amended, and its implementing regulations, until the statement is filed.

2.24.130 Enforcement.

A. The city attorney shall not investigate or prosecute any alleged violations of this article, but shall defend the constitutionality and legality of this article in any civil proceedings in which the city or the city council is a party.

B. Review of complaints of violation of this article and criminal prosecution thereof shall be commenced only by special counsel who shall be the district attorney, the Attorney General, or such other qualified and independent special counsel or combination of the foregoing as may be appointed by the city attorney. All special counsel shall have authority to prosecute any and all municipal code violations of this Article. However, special counsel other than the Attorney General or district attorney shall not have authority to prosecute matters exclusively within the powers of the Attorney General or district attorney as provided under Government Code §91001. Special counsel shall also commence and prosecute civil litigation to compel compliance with this article or to enjoin conduct in violation of this article, and shall commence administrative actions pursuant to SBMC 2.24.145.

C. The appointment of special counsel shall be done in writing, and copies of the written appointment shall be provided to the city manager, city clerk and members of the city council. At least 90 days prior to a city election, a special counsel may be appointed by the city attorney for that election. Should the appointment of additional special counsel become necessary or appropriate, the city attorney may appoint such additional special counsel as may be required. No enforcement or prosecution or action of special counsel shall be subject to the review or control of the city council or the city attorney. The cost of special council may be paid from the city general fund.

D. Any person residing in the city who believes that a violation of this article has occurred may file a written complaint requesting investigation of such violation by the special counsel. If the special counsel determines that there is reason to believe a violation of this article has occurred, it shall conduct an investigation and may commence such administrative, civil or criminal legal action as it deems necessary for the enforcement of this article.

E. The special counsel shall have such investigative powers as are necessary for the performance of duties described in this article and may demand and be furnished records of campaign contributions and expenditures of any person or committee at any time. In the event that production of such reports is refused, the special counsel may commence civil litigation to compel such production.

F. The special counsel shall be immune from liability for its enforcement of this article.

G. Any action alleging violation of this article must be commenced within two years of the time the alleged violation occurred.

2.24.140 Enforcement – Criminal or civil liability.

A. Any knowing or willful violation of any provision of this article may be prosecuted, either as an infraction or as a misdemeanor, at the discretion of the prosecutor under the provisions of Chapter 1.16 SBMC. In addition to any other penalty provided by law, any willful or knowing failure to report truthfully any contribution or expenditure shall be punishable by a fine of not less than \$500.00. The treasurer of any committee shall be

both criminally and civilly liable for any violation of this article by the committee. In addition, the candidate shall be both criminally and civilly liable for any violation by a committee controlled by the candidate.

B. In any legal action brought under this Article for injunctive relief or civil liability, where it is determined that a committee has accepted a contribution or contributions in excess of the applicable limit set forth herein, the full amount of said contribution(s) shall be forfeited to the City general fund. If funds are not available in the committee's account for this purpose, the candidate or treasurer shall be personally liable to pay said amount to the City general fund.

2.24.145 Enforcement – Administrative.

A. This section provides for administrative remedies for violations of this article, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the city to address any violation of this article.

B. Whenever the special counsel appointed pursuant to SBMC 2.24.130 determines that there is probable cause that a violation of one or more provisions of this article has occurred or exists, a written notice and order may be issued to the alleged violator.

C. The notice and order shall refer to the code section violated and describe how the sections are or have been violated, and the dates of all violations. The notice and order shall also set a date, time and place for a hearing, which shall be held no fewer than 10 days following the service of the notice.

D. The notice and order shall be served upon the alleged violator by personal service, or certified mail with postage prepaid and return receipt requested.

E. The city manager shall designate a hearing officer, who shall not be a city employee. The compensation of the hearing officer, if any, shall be paid by the city. The employment, evaluation, and compensation, if any, of the hearing officer shall not be directly or indirectly conditioned upon the outcome of the hearing.

F. At the hearing, the hearing officer shall consider whether a preponderance of evidence demonstrates the existence of the violation. The alleged violator or any other interested persons may present testimony or evidence concerning the existence of the violations, and the alleged violator may cross examine witnesses.

G. Hearings shall be conducted in an expeditious manner to enable all interested parties to present relevant evidence. Formal rules of evidence shall not be required. Time limits for presenting evidence, order of testimony, handling of exhibits, and similar matters shall be at the discretion of the hearing officer. The hearing officer may continue the hearing to obtain additional evidence, or for other good cause.

H. Failure of the alleged violator to attend the hearing shall constitute an admission of the violation by the alleged violator and a failure to exhaust administrative remedies that may bar judicial review.

I. After considering all the testimony and evidence submitted at the hearing, the hearing officer shall issue a written order, including findings regarding the existence of each violation, the reasons for the decision, and notice of the right to judicial review. The written decision shall be issued within 30 days of the hearing, and served on the alleged violator within 10 days of its issuance. The order shall be final upon service on the alleged violator, subject only to judicial review as allowed by law.

J. If the hearing officer finds that the alleged violator committed the violation by a preponderance of evidence, the hearing officer shall impose a penalty and a date the penalty and any administrative costs shall be due and payable.

K. An administrative penalty for a violation of this article shall be set at a maximum of \$5,000 per violation, and a minimum of \$500.00 per violation, and the maximum total penalty shall not exceed \$50,000. In determining the amount of penalty to be imposed, the hearing officer shall consider the following factors: duration of the violation, frequency of recurrence of the violation, seriousness of the violation, history of violations, good faith effort of the violator to correct the violation, economic impact of the violation on the violator, impact of the violation on the community and the city, and any other relevant factors that justice may require.

L. Upon the failure of any person to pay the assessed administrative penalty by the date specified in the hearing officer's decision, the unpaid amount shall constitute a personal obligation of the violator. The city manager shall collect the obligation by use of all appropriate legal means. If unable to collect the obligation, the city manager shall refer the obligation to the city attorney to file a court action to recover these costs.

M. Any person subject to a decision of the hearing officer may obtain judicial review of the decision in the superior court pursuant to the provisions of California Government Code Section 53069.4, as amended.

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2.24.150 Use of funds deposited with city.

Any funds paid to or deposited with the city by operation of, or pursuant to, the provisions of this article shall be placed in the city's general fund and designated for use in defraying the costs of municipal elections including the administration or enforcement of this article.

Section 2: The City Council of the City of Solana Beach hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared invalid.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after it's adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Solana Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code §36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Solana Beach, California, on the 23rd day of June, 2010; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the 14th day of July, 2010, by the following vote:

AYES: Councilmembers – Campbell, Heebner, Kellejian, Roberts, Nichols
NOES: Councilmembers – None
ABSENT: Councilmembers – None
ABSTAIN: Councilmembers – None

(d)(5)

THOMAS M. CAMPBELL, Mayor

APPROVED AS TO FORM:

(d)(5)

JOHANNA N. CANLAS, City Attorney

ATTEST:

(d)(5)

ANGELA IVEY, City Clerk